IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 815 of 1998

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGABHAI BHULABHAI - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :

THROUGH JAIL for Appellant(s) : 1,MS RV ACHARYA for Appellant(s) : 1,

MR K.P. RAVAL, APP, for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 10/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgement and order of conviction and sentence dated 14th August 1998, in Sessions Case No.81 of 1986 passed by the Additional Sessions Judge, Court Camp, Vyara, whereby the Sessions Court has convicted the appellant-accused for the alleged commission of offence under section 302 of IPC and ordered to undergo life imprisonment and fine of Rs.500/-, in default to undergo further simple imprisonment for a period of three months.

2.0 The prosecution case in short are as under:

2.1 Ichhiben, sister of the complainant Lallubhai Dhanjibhai was married to the appellant accused Bhagubhai Bhulabhai Halpati. On 19th November 1995 about 6 O' clock in the morning the complainant had

gone for labour work at the place of Mafatbhai Rabari. At about 7 O' clock the appellant accused Bhagubhai Bhulabhai came there and informed him that the complainant's sister has expired. Thereafter the complainant along with the appellant went to his place where the appellant stated that Ichhiben was suffering from fever for the last three days and she died because of fever. Thereafter they went to the house of the complainant. The dead body of Ichhiben was lying in the field of Bharatbhai. The complainant noticed that there was bleeding from the head, upper part of neck and there was cut in the neck. The complainant, therefore, got suspicious. He, thereafter lodged a complaint with Bardoli Police Station. The said complaint was registered as Crime Register No.182 of 1995 with the said police station for the alleged commission of offence under section 302 of IPC. The police commenced investigation and in the course of investigation arrested the appellant-accused. He voluntarily produced the muddamal weapon which was recovered under panchnama.

2.2 After the investigation chargesheet has been filed in the court of learned Judicial Magistrate, First Class, Bardoli. The said case was numbered as Criminal Case No.983/96. Since the case is triable by Sessions Court, the case was committed to Sessions Court, Surat and the case was numbered as Sessions Case No.81/96.

3.0 After hearing the parties the Sessions Court passed the aforesaid judgement and award convicting and sentencing the appellant-accused to undergo life imprisonment and fine of Rs.500/-, in default to undergo further simple imprisonment for a period of three months. It is against the said judgement and order of conviction and sentence the present appeal has been filed by the appellant-original accused.

4.0 Mrs. R.V. Acharya, learned Advocate for the appellant contended that the prosecution has not proved the case against the appellant beyond reasonable doubt and therefore the impugned judgement and order of conviction and sentence requires to be quashed and set aside. According to her there are no eye witnesses to the incident and no motive is established. Learned Advocate for the appellant further contended that the appellant had married to the deceased for the last more than 14 years and there is no allegation of any harassment. She therefore submitted that the conviction of the appellant under section 302 is without any basis and deserves to be set aside.

5.0 Mr. K.P. Raval, learned APP appearing for the State submitted that the prosecution has proved the case beyond doubt and the evidence on record clearly show that the appellant has beaten his wife as a result of which she has died. He submitted that there were injuries

on the body of Ichhiben and when the appellant and the deceased were last seen, he was quarrelling with her. The appellant had not disclosed that there were inquiries on the body of Ichhiben, but he stated that she died due to fever. He, therefore, submitted that the conduct itself of the appellant was suspicious and the Sessions Court has rightly come to the conclusion that the appellant is guilty of the offence alleged against him.

6.0 We have heard the learned Advocates for the respective parties and perused the relevant oral as well as documentary evidence on record.

7.0 The prosecution has examined in all 15 witnesses and produced on record complaint (Exh.76), Inquest Panchnama (Exh.13), Panchnama of scene of offence (Exh.11), Panchnama of evidence received from the dead body (Exh.97), Panchnama of the body of the accused (Exh.98), Panchnama of the muddamal article (28), postmortem report (Exh.36) and map of the place of the incident (Exh.41).

8.0 Lalubhai Dhanjibhai (PW1-Exh.9) was examined by the prosecution. According to this witness, the accused had informed him that Ichhiben had expired due to fever. However, when he went to the

place where the dead body was kept, he noticed that there are injuries on the neck and other places and blood was oozing. He stated that because of the injury on the neck and he presumed that somebody must have caused injury to her. He has got suspicious and therefore gave police complaint. In the cross-examination no question was put about the story of fever as developed by the appellant. Therefore the version of the complainant remained uncontroverted and no serious dispute was raised regarding the same.

9.0 Bharatbhai Mangubhai (PW2-Exh.10) was examined by the prosecution. He is the Panch witness of the scene of offence. He has fully supported the panchnama of scene of offence which is produced at Exh.11. Rakeshbhai Bharatbhai (PW3-Exh.15) was examined by the prosecution. He is the panch witness of Inquest Panchnama.

10.0 Subhash Jaganbhai Chaudhary (PW5-Exh.17) who is the panch witness in his evidence supported the panchnama of the clothes of the accused. He stated that in the presence of the Panchas the clothes of the appellant were taken and there was bloodstain on the collar of his bush shirt. He has identified the appellant in court and supported the panchanama.

11.0 The prosecution has examined Kaliben Bachubhai (PW9-Exh.23).

She is wife of Bachubhai. She has in her evidence stated that the appellant has beaten Ichhiben and she was thrown out on the ground on the day of the incident. Next day she came to know that Ichhiben expired. This witness has identified the appellant in the court.

12.0 Bachubhai Dhanjibhai (PW 11-Exh.26). Ichhiben was the sister of this witness. She stated that when she saw Ichhiben, she had already died. She noticed injuries on the back of her head and other places. She stated that Ichhiben had not died due to fever.

13.0 Bachubhai Dhanjibhai (PW 11-Exh.26) is the brother of deceased Ichhiben. He has also stated that there were injuries on the body of Ichhiben. Sureshbhai Durlabbhai Patel is the panch witness of panchnama of muddamal weapon. He had accompanied the accused appellant to Vankaner village. The appellant asked to stop the vehicle at particular place and took out the muddamal weapon. Panchnama of the same was prepared. He has identified the said muddamal in the court. Panchnama of Weapon is produced at Exh.28 which is not disputed.

14.0 The appellant is the husband of the deceased and as per the case of the prosecution on the date of the incident there was quarrel between the deceased and the present appellant. The injuries which are

reflected in column no.17 of the Postmortem report are not explained by the appellant. Two witnesses have seen the present appellant lastly with the deceased. Therefore the last seen theory is established by appropriate evidence.

15.0 The story put forward by the present appellant before the complainant was that Ichhiben was suffering from fever. This creates serious doubts about the statement and the appellant has not proved that Ichhiben was suffering from fever. The injuries which are reflected in column no.17 of the postmortem report clearly establishes that they are very serious injuries with sharp weapon. In the ordinary course in such circumstances the conduct of the appellant would have been to save deceased, but he has not tried to save her, especially when no other person was there.

16. The injuries stated in the postmortem report are as under:

> [a] Sharp cutting wound on the Rt. Temporal region about 1 cm of Rt ear size 2 cm x 1 cm bone deep. Regular margin oval shape reddish blue clour.
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> [2] Two L shape incised wound behind Rt ear. Both 1 cm x 1 cm size bone deep iregular margines, reddish blue colour.

[3] Blackish discoloration on the sides of cheek size 3cm x 2 cm oval shape with swelling of face.

[4] Laceration on both side of chin 10 cm size reddish blue.

[5] Laceration on Rt. Knee joint 1 cm size reddish blue colour."

The cause of death is stated to be internal cerebral hemorrhage due to injury on head.

17. It is an admitted fact that there were injuries on the body of Ichhiben. In spite of this when he went to Lalubhai Dhanjibhai, he informed that Ichhiben had died due to fever. According to him Ichhiben was suffering from fever for the last three days. However, he deliberately did not disclose the fact that Ichhiben had suffered injuries. Postmortem report clearly states that the cause of death is internal cerebral hemorrhage due to injury on head. This casts a doubt about the conduct of the appellant. Lallubhai (PW1) and Bachhubhai Dhanjibhai (PW11) had noticed blood on the head of Ichhiben and therefore they had inquired form the appellant as to what happened. To this query the appellant stated that she was drunk and fell down. However, the

postmortem report does not support the say of the appellant. From the evidence of Kaliben Bachubhai (PW9-Exh.23) it is established that on the day of the incident at abut 8 pm the appellant and Ichhiben had gone to bazar and had gone to the place of the incident. At that time the appellant was quarrelling with Ichhiben. The evidence of this witness clearly shows that they were seen together at that place and appellant was angry and quarrelling with her. It is not the case of the appellant that Ichhiben had gone to the field of his Seth and she died there. There is nothing on record to show that except the appellant no one was with Ichhiben at that place. Bloodstain was also found from the shirt of the appellant. The appellant himself has produced the weapon used in the alleged commission offence. The injuries are on the vital part of the body and the cause of death is internal cerebral haemmorage due to injury on head.

18.0 We are in complete agreement with the reasonings adopted and findings arrived at by the Sessions Court for convicting the appellant. No case is made out to cause interference in the appeal. The appeal is, therefore, dismissed.

19.0 The appellant Bhagabhai Bhulabhai Rathod of Criminal Appeal No.815 of 1998 is on bail and hence, his bail bond shall stand cancelled.

He is directed to surrender before the Jail Authorities within a period of two months from today.

[R.P. DHOLAKIA, J.]

[K.S. JHAVERI, J.]

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 10/07/2007

For the reasons recorded in the oral judgement delivered today in the open court, the Hon'ble Court has passed the following final order:

The appeal is dismissed. The appellant Bhagabhai Bhulabhai Rathod of Criminal Appeal No.815 of 1998 is on bail and hence, his bail bond shall stand cancelled. He is directed to surrender before the Jail Authorities within a period of two months from today."

10.7.2007

A. Raveendran
Principal Private Secretary